

Croatian Post-Socialist Transition or Transformation: Lost in Translation

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<https://doi.org/10.31297/hkju.20.4.3>

UDK 342.413(497.5)"1990/2019"
321.7:316.323(497.5)"1990/2019"
330.342(497.5)"1990/2019"

Original scientific paper / izvorni znanstveni rad

Received / primljeno: 24. 9. 2019.

Accepted / prihvaćeno: 23. 12. 2020.

The article analyses some changes of the Constitution of the Republic of Croatia and social phenomena over thirty years of transition and transformation of the economy and society. The findings point at very frequent radical changes in key institutions and the tendency to believe that problems can be solved via formal legislative approach. Most of Croatia's main problems (political and societal) arise from the wrong choice and performance of democratic and market institutions and understanding of integrations. The adopted legislation has not provided for predictability, reliability, or system stability in key areas of human interaction. The findings indicate an ambivalent attitude of the actors towards the state, the political system, and the rule of law. After three decades of transition and transformation, the failure of the established model of political gov-

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ernance is visible. In order to change the model of political governance, there must be an agreement about the political role model and the consensus about the fundamental values of society.

Keywords: post-socialist transition, transformation, democracy, constitution, society, governance, Croatia

1. Introduction

The article deals with the outcomes of key institutional choices and changes. An analysis of constitutional amendments refers to three periods of Croatian statehood: 1990-2000; 2000-2010, and 2010-2019. Three decades have passed since the adoption of the “Christmas Constitution” on December 22, 1990, when the fundamental legal and political document of the Republic of Croatia underwent six major changes. The country abandoned the one-party system and the socialist model of the economy and accepted the multiparty system and private capitalism; it chose the political system, the electoral system, and checks and balances institutions, which inevitably had a crucial influence on the results of the transition process. By analysing the legal and political process of transition and transformation of politics and the economy, the paper tries to establish the relation between the choice of the form of government and the electoral system with the results of political system management in the reality of European and global integration. It tries to demonstrate whether the chosen initial political institutions (political architecture and electoral system) were in line with the community’s perspective and social image. Three decades are sufficient time to judge the selected political package and its overall social outcome.

The author briefly analyses the transfer of the initial body of law pertaining to the political system, the economy, and society from the former Yugoslavia to the Republic of Croatia. Each of these three variables/values developed its own institutions in the recent past. Each of them had a different level of independence or their actions had some democratic elements. None of the institutions was without democratic elements; on the contrary, democratic elements were implicitly or explicitly contained in legal acts of these institutions. Another, and perhaps more important characteristic, was the establishment of a unique economic model of governance – ‘self-management’ or social capitalism – which was completely

different from the two established economic models: state capitalism in the East and private capitalism in the West (Horvat, 1983).

Replacing a non-democratic socialist system with democracy and market economy models required a better understanding of the fragile balance between market and governance and the need to establish a functional and strong state¹ in terms of a clearly chosen institutional framework. The success of the market economy and democracy is related to successful government. It is also well known that economic progress can be achieved through various combinations of institutional frameworks, depending on the values and needs of a particular nation (Stiglitz, 2004; Rodrik, 2011). Preferences in institutional design, legal culture, and volume of regulation or sociological image of society lead to very different choices and various combinations of political governance and market organization and ultimately to their different results (Stephens, 1995; Lijphart, 2012).

The second section explains the methodology used for analysing the terms used in the paper, which make up the essence of an institutional combination. The terms that we consider in the context of transition and transformation include freedom, democracy, transition, transformation, capitalism, the rule of law, good governance, participation, and institutions. Their original meaning is rather broad, while their content is indisputably related to the legal culture and the society they come from. The content of terms at the beginning of the Croatian transition and transformation process (T / T) is comparable with selected definitions. The third section describes the beginning of transition. Namely, both transition and transformation had their start date. There had already been the Croatian state – the people, the political, the economic and the legal system, the interest groups, the civic associations, the private property. Thus, there was life and culture covered by the legal system at the beginning. The fourth section presents the three phases of the transition-transformation process through the prism of changes of the fundamental legal and political document and specific social phenomena of that period. The conclusion summarizes the findings, focusing on the characteristics of society and the results of the model of political management during the process of transition and transformation.

¹ In this context functional and strong state implies functioning of institutions based on clear rules and responsibilities. The functional state (the rule of law) can produce results when it is rooted in people's behaviour and attitudes.

2. Methodology and explanation of terms

This section deals with definitions and content explanations for selected terms. The next section gives an overview of the scope these terms had at the beginning of the process of transition and transformation of Croatian society. An analysis of the main changes of the Constitution of the Republic of Croatia follows, together with some characteristic social phenomena in each of the analysed periods and their implications on the overall social development. By comparing the initial position and achievements after three decades of transition, the performance results are evaluated in comparison to the results of other countries.

2.1 Definitions and content of the selected terms

Institution. “Institutions are the rules of conduct in a particular society or more formally the limitations that man has deployed to shape human interactions” (North, 2003, p. 13). As the term of institution narrows down, the definitions of institutions differ from author to author and the society in which they live. What all definitions have in common is the “behavioural rules”. In other words, institutions are the consequence of certain legal culture of society (Pusić, 1989; Čepulo, 2001).

Freedom. Greek word freedom originally signifies legal-political freedom – a free city that is not under foreign rule (Coreth, 1998, p. 392). “Man is free if his action is directed towards good, which is truly the supreme purpose; it exists for its own sake and expresses the essence of freedom. The state is a mediator between man and the good”. A newer view of freedom (for individuals), the contemporary understanding of liberty (institutional), particularly in liberal and neoliberal concepts, starts from the absolute and unconditional freedom of the individual, which at the same time implies his complete responsibility for what he has done without the possibility of calling to collective responsibility. Freedom can be treated as a social value (Sen, 2012) or as an individual choice of a rational individual. However, looking at individualism and community, they are equally opposed to public good and private property, though both require responsible management. Consequently, the priorities of a rational individual and community priorities have different hierarchies and durability (Ostrom, 2006). Nevertheless, the growth in inequality rates, as a result of competition, leads people to helplessness in which every *freedom* becomes pointless (Sen, 2012; Pinker, 2018).

Democracy. One of the most widely used definitions is the one by A. Lincoln: “Democracy is the government of the people, by the people and for the people”. It is common to define democracy as a form of government in which the supreme authority (sovereignty) is in the hands of the people, and it is realized directly or through representatives chosen in free elections. This type of democracy is characterised by majority rule and corrected by guaranteed of human rights. Modern democracy can thus be defined as constitutional democracy, which implies majority rule with the rule of law and a full guarantee of the rights of individuals and minorities. Although it seems that access to democracy should follow the law, it would be wise to consider democracy as a way of life – to live democracy, because democracy is the optimal form of government for achieving the greatest ‘happiness’ for most individuals (Lauc, 1998, p. 139; Dahl, 1999). Pluralistic society is divided not only politically but also religiously, linguistically, culturally, and ethnically. There are also clefts in the economy (more or less developed); structure (agriculture and industry); legal culture (east and west) and identity (south and north). In other words, there is an immediate nexus between the choice of a democratic model and the degree of pluralism in a society. Political acceptance of democracy through elections is the first step towards identification with democracy and development. However, “it is not enough ... just to create a new institutional machine; the society has to be transformed first. It is also the duty of the government to create a common social will as the basis for a government which will represent the people in their entirety ... Change of society is a prerequisite for change of form of government” (Lijphart, 1992, pp. 30-31).

Rule of law. The concept of the rule of law means a system of political authority based on the respect of constitution, laws, and other regulations, by both citizens and the state authorities. The concept of the rule of law is not limited to formal respect of the principle of constitutionality and legality but requires the constitution and laws to have certain content, appropriate to a democratic system, so that they enable the protection of human rights and freedoms in relations between citizens and public authorities. Geographically, Croatian society is made up of six historically different legal-political systems (Čepulo, 2012), which do not understand or interpret the principle of the rule of law in the same way. When five decades of a unique system of self-managing socialism is added to the mixture, we get a unique collage of understanding the rule of law.²

² “The new socialist government insisted to overcome the past and “turn to the future”. New policies were led under the slogan that Josip Broz Tito himself gave in his first

Capitalism. The greatest number of analysts interpret capitalism as an economic system that, in its various manifestations, has special political and social features. In their view, capital is not a set of things, but primarily a set of social relations. It is expressed in the belief that the existing inequalities of income and wealth are an objective and justified outcome of various contributions that people give to economic activity. This implies that for the permanent benefit of a capitalist society certain freedoms and rights are indispensable. However, individuals must be protected from arbitrary state authority, and the state protects their economic interests by protecting their property rights and guaranteeing the implementation of trade agreements (Ferenčak, 2002). Capitalism has an inherent inequality, and because of that very reason there are several varieties of performance of the capitalist system, particularly on the European continent: from coordinated capitalism in Germany to hybrid capitalism in Scandinavian countries, as opposed to British economic liberalism – neoliberal capitalism (Campbell & Pedersen, 2007).

Good governance. As with previous concepts, there are different definitions of good governance depending on who uses the concept and for what purpose (IMF, WB, EC, etc.). A *new* definition of good governance has been created in the EU. The doctrine of good governance emerged at the turn of the 2000s, as a product of criticism of the very influential doctrine of new public management. The new public management has blurred the lines of political responsibility, reduced transparency, spurred corruption, reduced public spending, neglected citizens' rights, intensified regulatory activity in the state, and had other poor effects. The European Union has established the following principles of good governance: openness, citizen participation, responsibility, efficiency, and coherence. The first three principles promote democratic governance and the restoration of the democratic political legitimacy of modern states. Effectiveness and

speech in liberated Zagreb, on 21 May 1945: 'Enough with everything that once was!' Yugoslavia was only possible as 'New Yugoslavia', which would be radically (revolutionary) different from the previous "Old", royal Yugoslavia. The monarchy was replaced with a republic in 1945, a unitary country was replaced with a federation, a country that built the Yugoslav nation was replaced by a community of nations whose existence and development was guaranteed by the state. A country in which religious divisions had been encouraged was replaced by one actively suppressing the influence of clergy and religious organizations. A country whose political system had been based on party pluralism, was replaced by one that decided to eliminate 'party-brawlers', and set up a single – communist – party as the political hegemon. Instead of aspects of tradition around which there was dispute among the peoples, the Socialist Yugoslavia sought to reinterpret the past in a way that would make it less controversial" (Jović, 2008, p. 108).

coherence should enable efficient governance and institutional capacity building of European countries (Koprić, 2009, p. 71).

Self-Government became an important concept in Croatia in the beginning of the process of accession to the European Union. Local and regional self-government in Croatia was revived after the year 2000 and brought institutional changes (Koprić, 2013). The European Charter of Local Self-Government (ECLSG) had long been awaiting a debate in Croatian Parliament before it was partially adopted in 1997 and fully in 2008. While it was a federal state of the Socialist Yugoslavia, Croatia was a heavily decentralized country, with large and strong local self-government units that had 40 per cent share in the total state income. Decentralization was both political and financial: local authorities decided on all the key community needs and problems; they could levy certain taxes and had tricameral assemblies as a model of protection of the widest possible interests. The difference between self-government then and now is huge.

Participation. Here we are talking about political participation (engagement and action). “The concept of political inclusion encompasses political interests and policy talks, and the term political participation includes all activities by which citizens can influence political processes”. In pursuit of a realistic approach to democracy, R. Dahl understood democracy as effective political participation, involvement of all adults in the political process, equality in voting, citizen understanding of political issues and control over politics (Dahl, 1999). If political and civic participation is important for the health of democracy, we can talk about the necessity of establishing participative democracy instead of elitist or formal-representative democracy (Ravlić, 2007).

The concept of participation – involvement and action, and even of participatory management – may be interpreted in Article 122 of the Constitution of the Socialist Republic of Croatia: “The working class and all working people exercise power and manage other social affairs organized in organizations of associated labour, other self-managing organizations and communities, as well as class and other socio-political and social organizations”. There is also Article 127: “The management of organizations of associated labour, territorial communities, self-managing interest communities and other self-managing organizations and communities, and their organization shall be arranged so that working people in every part of the work process and in every organization or community decide on the issues of their work and other interests, exercise their self-governing rights and common interests, and control the implementation of decisions

and the work of all bodies and services of organizations and communities thereof”.

Transition. The transition of political systems is the interval between two regimes. Transition does not refer to the outcome, only to the *span*; it does not even talk about transition paths. Like any other term, the concept of transition has different explanations in the literature. O'Donnell, Schmitter and Whitehead (1986) offer a useful definition: “Transitions are limited, first to launching the process of solving an authoritarian regime and, secondly, by installing some form of democracy, return to some form of authoritarian government, or the emergence of revolutionary alternatives”. Mainwaring does not agree with their discussion on the concept of transition and arguments that no matter what “scope exists in any effective authority and procedures, it tends to be in the hands of authoritarian rulers” (Mainwaring, 1989). Thus, one could conclude that if the outcome is satisfactory, the country in question has made the right choice of the transition process!

Transformation. Transformation of a society implies a thorough change of the political regime, social order, and the economic system, with its analytical perspective focused on politics (Merkel, 2011). The sources of transformation are real-life conflicts of interest: centre – periphery, state – church, capital – work, individual – community and public good – profit. Five opposing values set a permanent framework for party systems of European democratic states. The political parties of Western Europe are a product of conflicts and certain permanent splits that have stabilized and constellated interests and society. Changes in political actions of the parties began at the end of the *Golden Age* and the beginning of globalization of the economy. Political parties became central institutions of civil society and modern democracy when they were accepted as legitimate mediators between society (citizens) and the state. However, J. S. Mill has already identified one of the key negative sides of the concept of political governance associated with political parties, “...neglecting political principles and transforming everything into the interests of the party, connection with monopolization of processes, the choice of persons, which puts rational arguments in a subordinate position in relation to the interests of the party” (Ravlić, 2007, p. 983).

The term *transformation* represented a specific type of social change that should be understood as an alternative way of (formal) change comparable to classical formation of modern democratic and capitalist societies over more than three centuries. In order to be accepted and successfully

performed, transformation has to express general terms through real life values. Freedom, independence, market economy and democracy, conceptual and comparative, should have their values and role model. Transformation is the key cause of social cleavage between the Croatian society and its political elite. After thirty years of transition in Croatia, the political elite and political parties have not yet completed their own *transition* to democratic political institutions.

The decision on transition from a single party system to a multi-party system was made by the socialist Parliament, led by the Communist Party. The political transition in Croatia ended with the first multi-party election in April 1990 and the constitution of a multi-party parliament. Croatia formally became a democratic country. People expected and public opinion supported the introduction of the pluralist political system. Definitions are here to point out the formal value of institutions. For a long-time, the world has recognized and understood the fundamental political dilemma: can we simultaneously deal with democracy, national decisions, and economic globalization, and in the case of Croatia, with the European integration process? We cannot. Croatia could not. We had to make a choice.

All of the terms have certain values and reflect quite different expectations, which should be equally considered. The differences in cultural traditions are visible between European countries and other regions as well as in relation to the heritage of political culture (Lijphart, 2012). However, values cannot be attributed or prescribed; they cannot be adopted by ordinance or recommendation because people and values had existed and inherited different legal cultures and lifestyles before transitions began. It is the people that are different, and these differences are inevitably evident in the content of institutions.

3. “In the beginning was ...”

This section provides a brief overview of real social values of the Croatian society at the beginning of the process of transition and transformation in the 1990s.

Institutions. The entire population had access to public education and health care. Social care, general security and job security in Croatia were often mentioned as highly successful and well-organized. The health care model was frequently analysed and even copied. Education was free of

charge. There were social funds for gifted individuals as well as institutional assessment preferences and professional orientation procedures for discovering talents. Social care, social assistance and housing assistance were a constituent content of social policies at the national level, but also a compulsory part of business policies of each socialist enterprise. There were high levels of trust, solidarity and assistance in society, especially within local communities. Social organization was based on large local self-management units with developed industry as a base for jobs and community expansion. Company business plans had compulsory plans for increasing the number of jobs for each subsequent year (co-ordinated society).

Freedom. Freedom in a society which is the owner and manager of social property had a completely different reflection of economic freedoms than the West preferred and advocated. The progress of society and increased standard of living since the mid-1970s was more apparent in reality than in statistics. With a Yugoslav passport one could travel wherever one wanted to. Skiing or shopping in Austria or Italy was quite common. Working hours were tailored according to the features of the community. Namely, the majority of employees in industry and public administration had additional income from second jobs or family farms where they produced and sold their products individually or in organized co-operation with the public sector. Almost every company had special funds to assist its employees, and each trade union had or organized vacations for workers. We can talk about political freedoms through legal regulation. There was only one political party. However, after the 1974 amendments to the Constitution, there was legal possibility of political competition (former President of the Republic of Croatia, Stjepan Mesić became an independent representative in the parliament of the Socialist Republic of Croatia). Another form of political freedom was rendered possible through the other two political institutions, chambers of associated labour and the Socialist Alliance. The former represented the interests of workers and the business sector in Parliament and in municipal assemblies. The latter engaged the whole population politically (all the inhabitants were members of the Socialist Alliance). We are not talking about the *performance* of any part of the mentioned political freedom, but about legal possibilities. The right to strike and referendum were also institutionalized. Judicial disputes between workers and employers were not uncommon and lasted for a long time. Religious affiliation was a personal matter of every individual.

Rule of law. Socialist Croatia had a tripartite government. It had a tricameral parliament, the executive branch, and judiciary and judicial over-

sight. Justice was organized on a functional basis (commercial courts, civil courts, labour courts, and administrative courts). As an inheritor of the concept of administrative legislation of the Habsburg Monarchy, Croatia had one of the best, perhaps even the best Administrative Procedure Act in Europe. Furthermore, the concept of the French Revolution – equality, fraternity and unity – was heavily embedded in the institutions of the federal state and those of the republics. Those values were accompanied by the rule of law and a strong legality culture. Today's Croatian political elite perceives the rule of law as part of the EU conditionality policy and not as part of the national tradition. Thus, a coherent system is not a routine, nor a transfer from another system, nor a set of comprehensive rules that solve all problems – it is a milieu in which people and society accept these rules or not (Hesselink, 2001).

Unfortunately, in such a copy-paste transformation, individuals could not see themselves as citizens whose freedom encompasses the possibility of not doing whatever is outside of their interests and wishes. It was obvious – and it still is – that freedom was understood as a space in which everyone can do whatever they want. If it is so, and evidence shows it is, the rule of law has remained only a formal constitutional category. We had the rule of law before! We formally have elections, but it is a simplistic democracy instead of democratic governance. We had elections before!

Capitalism. At the time, Yugoslavia was rather different from the two dominant types of capitalism: western and eastern. Yugoslavia chose a third way, an experimental type of capitalism for which there was no pattern, self-managed social capitalism. Social capitalism did not deny ownership, but social property was the property of society. Social capitalism, as well as any other system, required the establishment of market and management institutions. There are several key institutions that are clearly marked by social capitalism. The first and most important was participation. All bodies in self-governing organizations had members and the choice of the quality people important for the functioning of self-management institutions resulted in better or worse management of the enterprise. The second was the distribution of profit for technological development, strengthening of human resources, or social solidarity. The third value was socially responsible business. Civil society, as we now call the space between the private and the public, could not exist without the financial and other support of self-management business organizations. Sports and recreation, cultural events and cultural societies, long-term assistance to cultural and educational institutions, as well as allocations for communal infrastructure, were an integral part of companies' business

plans. However, the growth of profit was not imperative. The concept of political economy set a goal of high employment rate, but it was limited by the increase in pays and productivity. Because of that, additional economic activities and second jobs were quite common, and the authorities widely tolerated them. The socialist self-management economic system was constitutionally regulated – social enterprises could make co-operation agreements with private organizations or among themselves. Private property and private entities also existed (Horvat, 1983).

Socialist transformation of the society was conducted in the four and a half decades following WW II. The pursuit of “proper socialism” supposed that constitutional changes and experimental solutions could substitute the abandonment of democracy and market economy by the development of workers’ self-management at all social levels. In other words, transformation via socialist reforms encompassed the market, working democracy, social ownership, self-management, and indicative planning – the same institutions as in western and eastern capitalism, but with different goals. Regardless of the single-party regime, the reforms were carried out with difficulties and strong resistance in the less developed federal units. However, despite all contradictions, the success of socialist reforms in Yugoslavia was evident – Yugoslavia was one of the ten newly industrialized countries in the world. Croatia reached a similar degree of development two decades later, in the 21st century (Horvat, 1983; Stipetić, 2012; Vojnović, 2013, p. 153).

The transfer of the socialist economy towards private capitalism began before the collapse of Socialist Yugoslavia. It seems that Croatia today, thirty years later, is still faced with the same political problems which are a far bigger burden than economic problems. At the end of the 1980s, it was quite clear that the transition could not be carried out without pluralism in all three key areas of social interaction (market, property, and political concept). Thus, transition could not succeed if transformation does not conduct in all three areas. As it is well known, the attempt to build “new socialism” failed (Vojnić, 1989). Pursuant to this experience, it is worth pointing out that the process of transformation must be coherent, systematic, and controlled.

The western *transition* access to the democracy of communist countries of Eastern Europe was like replacing the door plaque – the old one was switched with the new one. However, behind the door there was a society with its cultural, political and economic heritage, extremely pluralistic and heterogeneous with a different attitude towards the state and the rule of law (Jović, 2008; Tomić-Koludrović & Petrić, 2005). Ignoring this

fact meant giving a wrong diagnosis and setting a wrong strategy of the T / T project in Croatia. Professor of constitutional law, Branko Smerdel (2019) summarizes it, “when we sum it up after thirty years, we can see that the project of democratic Croatia has failed”. In other words, the only remaining things from transition to a democratic state were multi-party elections and the possibility of the change of government. The “constitutional revolution” that started the transition in Croatia remained only on the formal level of the adopted aplenty of regulations we cite as success (Berman, 1983, p. 44). There is an abundance of law but little justice.

Although the institutions, the market, and democracy were in the centre of transition and transformation, their legal aspect cannot be evaluated without evaluating the former Federation, of which Croatia was a member. The development of those institutions had different paths and different outcomes, and in terms of social rights diametrically opposing features. The pendulum of solidarity in a democratic society, as the key value of the welfare society, does not always have to be on one side, depending on the political actors of the winning party or coalition. Mihaljević (2011) summarizes the former regime’s approach, “democracy, freedom and the protection of rights were only nominal because, while internationally proclaimed, internal constitutional law plans avoided taking over international obligations” (p. 50).

4. Legal-political performance of the process of transition and transformation

The process of transition and transformation in Croatia was not completely independent because it did not happen entirely under the mantle of internal actors. It was a common effort of domestic and foreign actors with different legitimacy: domestic actors had the legitimacy to accommodate external reform solutions, while foreigners in turn provided support to local actors (Mueller, 1996, pp. 141-143). To be free, to be successful, modern, contemporary, meant to follow the same path, the same experience, almost unconditionally adapt to suggested or imposed external institutional solutions in all areas of life – to become other people was the task. However, the proposed institutional solutions with regard to the type of democracy, capitalism, political system and the experience of presenters, were not discussed, although the outcomes were quite different from one democratic country to another – under the same terms

– beginning with the basic legal and political document, the Constitution (Posavec, 2000). The past three decades of transition and transformation process in Croatia can be divided into three main periods of ten years, three stages of changes.

4.1 First stage – The Christmas Constitution of 1990 and afterwards

The process of democratic change in Croatia was not the outcome of national pressure, there were no mass demonstrations or other type of mass political protest. The National Movement had emerged as a support to political reforms and the crisis of the state. Therefore, the old political elite had the key political influence on the creation of democratic political institutions. The two strongest political parties had a similar stance towards the choice of the electoral system and the model of government. The majority electoral system and parliamentary government were proposed by reformed communists, while the strongest opposition parties advocated for parliamentary government and the proportional electoral system. However, after the elections were carried out, the new elite institutionalized the semi-presidential system, “presidential parliamentarism”, and the segmented electoral model (Kasapović, 1996, pp. 94-96). According to the established institutional preferences, the new political elite in Croatia was similar to the old or reformed elites in Eastern European countries (Szelenyi & Szelenyi, 1995). Given the way of making institutional solutions, experience shows that the majority electoral system in principle causes instability in the political system and leads to fundamental changes at each change of government. Thus, at the very beginning of the new institutional endeavour there was no attempt to gather political actors and use evidence-based design of political institutions, despite the window of opportunity.

The legal aspect of transition and transformation process is evident in the structure of Croatian Constitution. Its preamble titled *Historical Foundations* had practically the same preamble as the 1974 Constitution of the Socialist Republic of Croatia. The Christmas Constitution continued with the legal practice of defining classical liberal democratic institutions, nationality, and citizens (Štiks, 2016). Defining the nationality and citizenship, the use of public services and the voting right opened an area for political manipulation afterwards. As a result, at one point, Croatia had a few hundred thousand voters more than the total population. The Croatian Constitution could be perceived as a programmatic political doc-

ument (Smerdel, 2013), unlike others, which are seen as legal-political acts. Thus, while the others open the competition space within a defined framework, Croatian political elite tends to cement the *state* (Smerdel, 2009, p.105).³ The second feature was the prominent multiculturalism that rests on the history of Croatian statehood in the preamble of the Christmas Constitution. However, the Croatian society was and still is divided by cultural differences and cleavages (geographical, ethnic, national, ideological, religious), producing a non-viable democratic society. Three decades after the adoption of the Christmas Constitution, Croatia has fewer than four million inhabitants, i.e. it has almost one million fewer inhabitants and the divisions within society have never been greater.

The legal specificity of social ownership influenced the model of privatization launched in the former Federation. The Federation adopted a privatization model in which the state conducted the assessment and controlled the value of a business entity as well as the sources of funding. The new political power rejected the socialist model of privatization and accepted its own programme called the Conversion and Privatization Programme. The new programme was created and implemented far from the public eyes. The process was finally completed by a constitutional provision stipulating that “crime and robbery in the process of conversion and privatization have no statute of limitations”. After that, nothing happened.

The third feature of the first stage of democratic transition is an important empirical fact of civil society development. In the socialist society the freedom of association was limited and directed. However, in the new circumstances, the inherited passive attitude of citizens showed its negative side. The reformed Communists understood very well what it takes to create favourable conditions for the development of civil society in a democratic environment, but in reality they claimed that the Red Cross and Caritas were quite sufficient civil society organizations (Bežovan & Matančević, 2017, p. 33).

4.2 The second stage – The constitutional amendments of 2000 and beyond

The 1990 Constitution affirmed Croatia’s sovereignty and independence; the preamble emphasized the multicultural value of the state. The ques-

³ In October 1995, President of the Croatian Parliament proposed to declare Franjo Tudman lifelong President by amending the Constitution.

tion is whether the Constitution ensured the achievement of these values and their legitimacy; whether the constitutional principles found their place in the adopted regulations or they remained formal recordings. The preambles of other constitutions strongly determine (e.g. the foundations of the United States, Germany or Japan) the aspirations of the founders, i.e. the very essence of the endeavour (Bačić, 2012).

The constitutional amendments of 2000 happened in the wake of the first change of government and election of a new President. The then elected political coalition changed the Constitution by introducing a parliamentary instead of a semi-presidential system. However, the concept of parliamentary system was not clearly defined. Less than six months later, in March 2001, the Constitution was changed again in order to abolish the House of Counties and finally introduce a unicameral parliament. The opposition (in power until 3 January 2000) accepted the idea of a weak President of the Republic, understanding the constitutional model of state organization as an adjustment of the ideas and personality of the current leader. Of course, the ideas concerning the position and powers of the President did not disappear from the agenda; they were merely postponed until the next presidential election. It was, and still is, is a topical issue at both sides of the political spectrum (Smerdel, 2010, pp. 8-9). However, the understanding of legitimacy of constitutional values among political elites was brought down to cutting out the Constitution in accordance with the currently available capacities of the ruling coalition. It is quite clear that such an approach to constitutional design and the realization of constitutional values is rather different from the values and principles embodied in the Constitution itself. After two decades, it became much clearer to everyone that Croatian society is a pluralistic and heterogeneous society, whose values are inevitably in constant mutual conflict more than before (Tomić-Koludrović & Petrić, 2005). Changing the Constitution in the circumstances of the change of government, instead trying to achieve social goals, shows a selective approach to building a fundamental legal-political document, mostly oriented towards party interests.

The 2010 amendments to the Constitution of 2010 established a valid constitutional basis for the accession of the Republic of Croatia to the European Union, and introduced other provisions necessary for the effective functioning of the country within the EU. There were two groups of important changes that were not adequately discussed: (1) constitutional issues arising from certain EU negotiation chapters – independence of the Croatian National Bank and the State Audit Office; active and passive voting rights of EU citizens residing in the Republic of Croatia; strength-

ening the independence, impartiality, and professionalism of the judiciary; effective implementation of the EU Council Framework Decision on a European Arrest Warrant, and (2) constitutional issues that were not directly related to negotiation chapters but to the modalities of the accession and functioning of the Republic of Croatia within the European Union – constitutional basis for the EU accession; referendum on Croatia's EU membership; transfer of constitutional powers, participation in EU institutions, direct effect and application of EU law, relationship between legislative; the executive and the judiciary after EU membership and EU citizenship in the Republic of Croatia, and securing their rights etc. (Bačić, 2011, p. 159). The first group makes a substantive package of changes that directly concern the fundamental legal document and its status with respect to the Accession Agreement. Independence of some institutions speaks little about the essence of these changes or about the position of the Constitutional Court in relation to EU legislation. For example, the Constitutional Court of the Federal Republic of Germany has the right and obligation to establish the conformity of certain treaties or EU regulations with German constitutional provisions. Furthermore, there are different degrees of institutional independence and institutions differ from one EU member to another. The second issue is related to sovereignty and the scope of options state has at its disposal when there are cases of particular national interest. It should be the most important political issue for all political parties.

The amendments to the Constitution were largely conditioned by the process of Croatia's accession to the European Union. One-time mitigation of the criterion of legitimacy of the referendum on the issue of EU accession clearly shows the political position of domestic political elite on the importance of direct democracy as well as the faith in their own project. The regulation of referendum casts light on childhood illnesses of Croatian democracy, first and foremost on the issue of the imprecise number of voters. For twenty years, Croatia had several hundred thousand registered voters more than the total population and conducted all elections under these circumstances.

Some changes of the Constitution were motivated by purely domestic considerations. The most controversial was an amendment to the Constitution which prevented the statute of limitations for war crimes and crimes connected with war profiteering and privatization. The amendments to the Constitution should have been followed by enacting performance regulations and establishment of executive bodies that would impose sanctions in the following period (with a deadline). This was a

particularly interesting topic given the direct and clear requirement of international factors to adopt a national anti-corruption plan. The most impressionable indicators of good governance – the rule of law and control of corruption – kept the same performance level from 2004 to 2013, according to Worldwide Governance Indicators (WGI, 55 and 60 percent, respectively, cf. Galović, 2015, p. 109). In 2017, corruption control kept the same level, while the rule of law was better for ten percentage points (WBG 2019). The WGI 2018 Corruption Indicator provides the best description of social relations that cover the concept of corruption in Croatia. In that sense, the constitutional provisions that prevent the statute of limitations are entirely formal.

4.3 The third stage – The period of integration and popular referenda initiatives

The third stage of development was characterized by popular referenda initiatives. The first constitutional initiative of 2014, as well as the latter ones, demonstrated the use of referendum as a national instrument in democratic processes outside the political elite with a highly effective civic influence, but also indicated the necessity of providing clear legal regulation of direct democracy. Đorđe Gardašević (2016) discusses the referendum as a democratic tool with the aim of pointing out at an important practical problem of constitutional regulation of referendum. Gardašević notes that the majority of recent popular initiatives focus on two areas of citizens' interest – economy and ideology. The first reflects dissatisfaction with the government's economic and social policies, and the second a desire to reconstruct the model of representative rule. In fact, these two are interconnected, which was confirmed when more than 600,000 signatures against the adopted pension reform were collected in May 2019.⁴

Another important feature was the constitutional crisis caused by failed election of the Constitutional Court judges. In 2016, the Croatian Parliament was steadfast in its attempt to elect new judges of the Constitutional Court, which threatened to block the work of the key supervisory institution. In addition, some questioned the purpose of the Constitutional Court (Gardašević, 2016; Smerdel, 2016). Thus, after thirty years

⁴ Available at <https://www.jutarnji.hr/vijesti/hrvatska/skupljeno-vise-od-600000-potpisa-sindikati-otkrili-kad-bismo-mogli-na-referendum-kazu-da-su-im-potpise-davali-i-oni-koji-su-vec-u-penziji/8855414/>

of the independent state, the election Constitutional Court judges and the very purpose of the Constitutional Court have become a matter of political competition instead of the key responsibility of the political elite that should ensure normal functioning of the state by electing professional, experienced and respected candidates as Constitutional Court judges (Antić, 2015).

The legislative process is dominated by two forms of legislature which are not clearly based on the Constitution: the adoption of bills aimed at harmonisation with EU law and the adoption of laws in an urgent procedure. Both forms point at urgency for which there should be, according to the Constitution, truly solid arguments or special circumstances (war, natural disasters, pandemics, etc.). However, most of the urgently adopted legislation is related to harmonisation with EU law. Between 1990 and 2019, Croatian Parliament adopted 5,150 laws the vast majority of which were amended or amended several times during the same calendar year.⁵ These data show that speed is not a virtue, and that quantity does not necessarily mean quality work. Overall indicators verify this assertion.

The country that has been swallowed up by a single party, political parties ruled by party chieftains, single-candidate party elections, competition as a waste of energy – these are the characteristics of the political scene in Croatia. Consequently, the governments' results are the product of these characteristics. Croatia ranks 25th by per capita GDP out of 28 EU countries, 29th out of 46 European countries and 60th out of 133 countries in the world.⁶ According to the prosperity index, Croatia is 25th out of 28 EU member states and 41st out 149 evaluated countries. However, the ranking in other two areas confirms the author's findings: 104th ranking in business climate and 109th in social capital out of 149 countries evaluated. It is worth pointing out that citizens hold less favourable opinions about some indexes than the rankings show – Croatia is 15th in environmental protection, 33rd in security, and 34th in education. Two related areas, economy and management, occupy 64th and 55th place, respectively.⁷ Comparative indicators of the country,⁸ the loss of population and the abundant

⁵ Available at <https://www.nn.hr/>

⁶ Available at <http://statisticstimes.com/economy/european-countries-by-gdp-per-capita.php>

⁷ Available at <https://www.prosperity.com/rankings>

⁸ Available at <https://www.imd.org/wcc/world-competitiveness-center-rankings/world-competitiveness-ranking-2019>

transfers of central government grants, maintain a relatively inert society, unwilling to make a progressive step and indifferent to regressive tendencies. Emigration of young people to other EU countries has further emphasized social indifference, even nihilism towards the current state of Croatian society and dominant social phenomena. The stratification of society is visible not only at the economic level but also at the general level of understanding the political processes. In such a stratified society, it is difficult or even impossible to expect a sudden change in the political paradigm.

It is obvious that transition reached its limits a long time ago, and the sole reliance on foreign direct investment or funds is insufficient for faster economic development. To accelerate the economic growth and catch up with the developed EU countries, it is necessary to pursue our own development strategy based on Croatia's own resources and comparative advantages (Acemoglu & Robinson, 2006). Therefore, the power of the state must be clearly distinguished from its ability to make transparent plans and enforce political decisions. However, the inadequate domestic demand for institutional reforms, as opposed to the external one, is the main obstacle to creating development strategies without external influences. It should be emphasized that state-building skills remain a key component of nation power and *vice versa*, regardless of the degree of integration (Fukuyama, 2005).

Croatia successfully fulfilled the conditions for the transfer of EU law to the Croatian legal system during the EU accession process. It also successfully transfers EU regulations as a member state. The power of transposed European law as an educational instrument has not proven to be particularly advantageous in the case of Croatia. The majority of social and political actors have shown readiness to formally accept new legal rules, unwillingness to act upon them, and reluctance to adapt policies based on analyses. These are the key issues of Croatian transformation.

The only two important political issues in the public debate have been the referenda on the country independence and the EU accession. There has been little or no public debate about the transformation models appropriate for other social or economic institutions. The political elite did not create conditions for fair debate about the models of institutional transformation and their consequences for society, nor it made comparisons with transformation models and their consequences in other countries. For example, how to build up a welfare state of Danish type? What was quite noticeable was the growth in the number of supermarkets and the selection of goods on their shelves. The internal public debt and citizens'

debt problems have grown along with the growth of public spending – it is called super-market democracy. We have lost the citizen among the supermarket shelves. Do we have a society at all?

5. Conclusion

Changes of the Constitution of the Republic of Croatia were of a project nature, more focused on the political elite in power than on the substantive permanent changes of the political system goals. They enabled the superiority of the political elite over other political actors and citizens. These changes did not significantly affect the model of political governance in the country. The well-known socialist model – the state = the party – continued to be used by all actors in a new, democratic environment. Being part of the political elite in power has secured many privileges. Consequently, the state continued to grow and build procedures to satisfy the appetites of its political controllers. The central government has become a key player deciding on the development of a particular region or municipality. Because of that, it is very important from where members of political elite have been recruited. Political party verticals have enabled the accumulation of political and public positions.

Croatian society has never been so divided geographically, regionally, politically, ideologically, ethnically, and religiously. The ghosts of the past have risen. The main daily policy themes show that the project of omni Croatan reconciliation has failed not for lack of good intentions, but because of antinomy. Moreover, the increase in inequality, insecurity, ineffective rule of law, and irresponsiveness has resulted in population loss, further enhancing the antinomy. The achievement of political freedoms and the registration of more than 160 political parties say more about the deep cleavage in the society than about its freedoms. The dichotomy of Croatian readiness to integrate and inability to manage its own development is still burdening Croatian citizens.

The development of the economy has not reached the expected level, given the potential Croatia had in industrial capacities and people. All economic indicators place Croatia at the bottom of the 28 EU member states. Most of the former Eastern bloc countries, which were lagging far behind Croatia in the 1990s, now have far better economic indicators. Apart from them, Slovenia, another member of the former Yugoslav federation, is also rapidly moving away from Croatia. It seems that tran-

sition and transformation in Croatia has taken a reverse direction in the development of social and economic relations. Instead of implementing the suitable and tested models of mixed balance strategies between unconditional 'opening' and firm state regulation, the dominant actors have opted for unconditional 'opening' and firm political control of the process of creating a new elite.

Most of Croatia's main problems arise from misunderstanding the content and importance of the process and performance of democratic political and market institutions. The concepts and institutions (economic and political) in continental Europe differ significantly in content from the same institutions in other regions. By accepting opposite institutional options, a patchwork consisting of conflicting elements of political and market institutions, unconditionally accepted in the name of *transition* to the expected better modern democratic society, was created. The approach to transition as an ideological construction of the promised integration of the former socialist countries into the European capitalist 'centre of freedom' contained firm ideological assumptions and estimates. One of them was the weak state capacity, for which it is no longer possible to find justification in the former political system after three decades of transition and transformation. If the problems which Croatia faces after thirty years can no longer be attributed to socialism or to the liberal concept, they can only be attributed to the legal culture and the chosen model of political governance. Calling on the political elites to continue the process of transition and pursue the same manner of governance is neither justified nor acceptable. Croatian society must face with the consequences of the chosen transition and transformation model. Perhaps a more vigorous debate about the results of three decades of transition and transformation in Croatia would lead to disillusionment and a decision about the new beginning.

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CROATIAN POST-SOCIALIST TRANSITION OR TRANSFORMATION: LOST IN TRANSLATION

Summary

The article analyses some constitutional changes and social phenomena over thirty years of transition and transformation of the economy and society in Croatia. The findings point at very frequent radical changes in key institutions and the tendency to believe that problems can be solved via formal legislative approach. Most of Croatia's main problems (political and societal) arise from the wrong choice and performance of democratic and market institutions and understanding of integrations. The adopted legislation has not provided for predictability, reliability, or system stability in key areas of human interaction. The findings indicate an ambivalent attitude of the actors towards the state, the political system, and the rule of law. After three decades of transition and transformation, the failure of the established model of political governance is visible. In order to change the model of political governance, there must be an agreement about the political role model and the consensus about the fundamental values of society.

Keywords: post-socialist transition, transformation, democracy, constitution, society, governance, Croatia

HRVATSKA POSTSOCIJALISTIČKA TRANZICIJA ILI TRANSFORMACIJA: IZGUBLJENI U PRIJEVODU

Sažetak

U radu se analiziraju ustavne promjene i društvene pojave u tridesetogodišnjem razdoblju tranzicije i transformacije gospodarstva i društva u Hrvatskoj. Vrlo česte radikalne promjene ključnih institucija i sklonost vjerovanju kako se problemi mogu riješiti formalnim zakonskim putem među ključnim su nalazima. Većina temeljnih političkih i društvenih problema u Hrvatskoj proizlazi iz pogrešnog odabira i djelovanja demokratskih i tržišnih institucija te razumijevanja integracija. Količina donesenih propisa nije dovela do predvidljivosti, pouzdanosti ili sistemske stabilnosti u ključnim područjima ljudske interakcije. Nalazi pokazuju podvojen stav aktera prema državi, političkom sustavu i vladavini prava. Poslije tri desetljeća tranzicije i transformacije vidljiv je neuspjeh odabranog modela političke vladavine. Želi li ga se promijeniti mora postojati suglasnost o političkom uzoru i slaganje o temeljnim vrijednostima u društvu.

Ključne riječi: postsocijalistička tranzicija, transformacija, demokracija, ustav, društvo, vladavina, Hrvatska